SUPREME COURT, U.S.
Supreme Court, U. S.
FILED
APR 21 1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 71-1239

NORMA M. BARDEN,

Petitioner,

VS.

JUNIOR COLLEGE DISTRICT NO. 520 OF THE STATE OF ILLINOIS; RALPH E. FRANCIS ET AL as MEMBERS OF THE BOARD OF JUNIOR COLLEGE DISTRICT NO. 520, STATE OF ILLINOIS,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

DONALD D. ZEGLIS
First National Bank Bldg.
Momence, Illinois 60954
Attorney for Respondent

MIDWEST LAW PRINTING CO., CHICAGO 60601, FINANCIAL 6-3988

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 71-1239

NORMA M. BARDEN,

Petitioner,

vs.

JUNIOR COLLEGE DISTRICT NO. 520 OF THE STATE OF ILLINOIS; RALPH E. FRANCIS ET AL as MEMBERS OF THE BOARD OF JUNIOR COLLEGE DISTRICT NO. 520, STATE OF ILLINOIS,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

The Respondent, Junior College District No. 520 of the State of Illinois; Ralph E. Francis et al as Members of the Board of Junior College District No. 520, State of Illinois, respectfully move this court for the dismissal of the Petition for a Writ of Certiorari for reason that more

than ninety days has expired since the Illinois Supreme Court on November 29, 1971, entered its order and the filing of this petition on March 29, 1972, all as affirmatively appears on page 3a of the petition and the records of this court.

Furthermore, respondent respectfully maintains that no new or undecided aspect of Constitutional Law is involved in this cause so as to entitle the PETITIONER to the issuance by this COURT of a Writ of Certiorari to the Supreme Court of Illinois to review its opinion and judgment.

ADDITIONAL STATEMENT OF FACTS.

The facts in this matter are that the petitioner was employed as a member of the faculty of the Kankakee Community Junior College District, the respondent, under a written contract from August 15th, 1969 to June 30, 1970. It was her first employment with the respondent. Her contract was terminated at a public meeting on February 23, 1970, following a board hearing closed to the public on February 16, 1970. The petitioner thereupon filed a petition in the Circuit Court of Kankakee County for the issuance of a Writ of common law Certiorari to the Board of Junior College District No. 520, the respondent. The Circuit Court denied petitioner's request for leave to file a petition requesting issuance of the writ, holding that the Junior College Board was acting in a ministerial capacity when it terminated the petitioner's

contract and that the Board had the right to do so as the Illinois Revised Statutes, Chapter 122, Section 103-42, gave the district the right to employ personnel and to establish policies governing their employment and dismissal. The court further held that an Illinois Junior College District is a quasi-corporation capable of entering into contracts, conducting its own affairs and of suing and being sued and that accordingly petitioner had an adequate remedy by a suit for damages. There is no statute granting the petitioner a right to any hearing.

It is submitted that the petitioner has not been deprived of property without due process of law contrary to Article II of the Illinois Constitution and the 14th amendment to the United States Constitution as she has an adequate remedy at law.

The Writ of Certiorari, which is discretionary with the court, is not a proper remedy where another adequate remedy is available and indeed may be an inadequate remedy because the relief sought would be limited to recovery of the balance due on petitioner's contract and could not provide for damages if petitioner was so entitled.

In the instant case the respondent Junior College Board was only exercising its administrative discretion and responsibility in dismissing its employee and in giving the employee the hearing agreed in the contract. The contractual obligation in granting the employee a hearing in no way created a statutory procedure that would bring the Junior College Board under the administrative review act of Illinois, making it a quasi-judicial proceeding or cause the Junior College Board to become an inferior tribunal to the Circuit Courts of Illinois.

It is the respondent Junior College Board's position that to allow review of its administrative acts by the Circuit Courts by the issuance of writs of certiorari would open a new avenue of litigation for the review of the dismissal of all employees of units of local government. That henceforth every employee of any City, Village, Park District Township, County, Fire District, Drainage District and other special districts could demand prolonged tribunal hearings before the respective governing bodies, that great expense would result, and the efficient administration of all these taxing bodies would suffer. To hold in favor of certiorari would allow the judiciary, without constitutional or statutory authority, to encroach on the executive branch of the government in their executive duties. The petitioner has failed to cite one case where a writ of certiorari would lie to review the discharge of any public employee without some statutory provision creating some standard of procedure. In the case at bar none existed.

Respondent asks that the petition for the issuance of a writ of certiorari to review the decision of the Supreme Court of Illinois in this case be denied.

Respectfully submitted,

DONALD D. ZEGLIS
First National Bank Bldg.
Momence, Illinois 60954

Attorney for Respondent